

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 1750

INTRODUCER: Appropriations Committee on Criminal and Civil Justice and Senator Martin

SUBJECT: Sexual Offenses

DATE: February 27, 2026

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Fav/CS</b>
3.	<u>Parker</u>	<u>Siples</u>	<u>FP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1750 amends multiple Florida laws to increase penalties for, provide mandatory minimum sentencing for, and revise crimes related to sex offenses. Specifically, the bill amends:

- Section 775.0847, F.S., to revise the circumstances under which the violation of specified offenses relating to child pornography must be reclassified to the next higher degree.
- Section 794.0116, F.S., to increase mandatory minimum prison sentences for certain sexual offenses committed by persons previously convicted of a sexual offense.
- Section 827.071, F.S., to increase penalties for use of a child in a sexual performance, create the crime of aggravated use of a child younger than 12 in a sexual performance, provide a mandatory minimum sentence for certain crimes, and increase the penalty for knowingly soliciting, etc., child pornography for a person 18 years of age or older at the time of the offense.
  - The court is not required to impose a mandatory minimum term of imprisonment for a violation of this section if the court makes written findings related to the sexual performance that forms the basis of the violation under specified circumstances.
- Section 827.072, F.S., to provide increased penalties persons who transmit generated child pornography.
- Section 828.126, F.S., to provide increased penalties for offenses relating to sexual activities involving animals.
- Section 847.011, F.S., to provide that prosecution for offenses relating to the prohibition of certain acts in connection with obscene, lewd, etc., material, does not preclude prosecution for a violation of another crime.

- Section 847.0137, F.S., to define the terms “access credential,” “cloud storage,” “link,” and “transmit,” and to increase penalties and provide a mandatory minimum term of imprisonment for a person who was 18 years of age or older at the time of the offense, and provides a good faith exception for reporting information to law enforcement.
  - The bill provides that a court is not required to impose a mandatory minimum term of imprisonment for a violation of this section if the court makes specific written findings related to the image that forms the basis of the violation.
- Section 921.0022, F.S., to rank offenses relating to criminal sexual conduct in the Offense Severity Ranking Chart (OSRC) of the Criminal Punishment Code.

The bill may have a positive significant fiscal impact on the Department of Corrections. See Section V., Fiscal Impact Statement.

The bill takes effect on July 1, 2026.

## II. Present Situation:

Florida law currently contains a variety of statutes that prohibit acts relating to criminal sexual conduct. A summary of these laws follows.

### **Sexual Performance by a Child, Child Pornography, Possession or Promotion of Child Pornography, Sexual Activity Involving Animals**

#### *Sexual performance by a child*

A person is guilty of the use of a child in a sexual performance, if they direct, or promote any performance which includes sexual conduct by a child.<sup>1</sup> A person who violates this offense commits a second degree felony.<sup>2</sup>

It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, that includes child pornography. The possession of three or more copies of such media is prima facie evidence of an intent to promote.<sup>3</sup> A person who violates this offense commits a second degree felony.

It is unlawful for any person to knowingly solicit, possess, control, or intentionally view any media which, they know to include child pornography. The solicitation, possession, control, or intentional viewing of each such media is a separate offense. If such media depicts more than one child, then each child in each such media that is knowingly solicited, possessed, controlled, or intentionally viewed is a separate offense.<sup>4</sup> A person who violates this offense commits a third degree felony.<sup>5</sup>

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<sup>1</sup> Section 827.071(3), F.S.

<sup>2</sup> A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine up to \$10,000, as provided in ss. 775.082, 775.083, and 775.084, F.S.

<sup>3</sup> Section 827.071(4), F.S.

<sup>4</sup> Section 827.071(5)(a), F.S.

<sup>5</sup> A third degree felony is generally punishable by not more than 5 years in prison and a fine not exceeding \$5,000, as provided in ss. 775.082, 775.083, and 775.084, F.S.

### ***Child Pornography***

Child pornography is any image depicting a minor engaged in sexual conduct; or any image that has been created, altered, adapted, or modified by electronic, mechanical or other means, to portray an identifiable minor engaged in sexual conduct.<sup>6</sup>

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,<sup>7</sup> the Supreme Court of the United States recognized that states have a compelling interest in safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Court noted that it was “unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work.”<sup>8</sup>

The use of AI has also been used to create child pornography, sometimes referred to as “morphing.” The Federal Government prohibits such images; however, the Supreme Court of the United States has found that the child or minor depicted in the image must be a real minor for such bans to pass constitutional muster.<sup>9</sup> Under these principles, states have constitutionally been able to criminalize the possession, distribution, etc., of child pornography. However, the constitutionality of criminalizing such acts is less clear when the images at issue are morphed pornography.

### ***Child Pornography Prevention Action of 1996***

In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),<sup>10</sup> which created a definition of “child pornography.” This criminalized, for the first time, acts relating to morphed child pornography. Under the CPPA, “child pornography” was defined as:

- (8) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct,<sup>11</sup> where:
- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
  - (B) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct (i.e., *virtual child pornography – created without using an actual child*);
  - (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor<sup>12</sup> is engaging in sexually explicit conduct (i.e., *morphed child pornography*); or

<sup>6</sup> Section 827.071(1)(b), F.S.

<sup>7</sup> *New York v. Ferber*, 458 U.S. 747 (1982).

<sup>8</sup> *Id.* at 763.

<sup>9</sup> *See Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

<sup>10</sup> Pub. L. No. 104-208, s. 121.

<sup>11</sup> The term “sexually explicit conduct” was defined as actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal) whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person. 18 U.S.C. s. 2256(2) (1996 ed.).

<sup>12</sup> The term “identifiable minor” was defined as a person who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, and who was a minor at the time the visual depiction was created, adapted, or modified, or whose image as a minor was used in creating, adapting, or modifying the visual depiction. The term was not construed as to require proof of the actual identity of the identifiable minor. 18 U.S.C. s. 2556(9) (1996 ed.).

(D) Such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.<sup>13</sup>

In 2002, the United States Supreme Court decided *Ashcroft v. Free Speech Coalition*,<sup>14</sup> a case in which a California trade association for the adult-entertainment industry challenged section 2256(8)(B) of the CPPA as unconstitutionally overbroad. As noted above, section 2256(8)(B) made it a crime to possess or distribute images depicting a child or what appears to be a child, engaging in sexually explicit conduct (i.e., virtual child pornography).<sup>15</sup>

The Court held that the “speech” criminalized in the challenged provision of the CPPA violated the First Amendment because it extended the federal prohibition against child pornography to sexually explicit images that appeared to depict minors but were produced without using any real children.<sup>16</sup> The Court decided that by prohibiting child pornography that did not depict an actual child, section 2256(8)(B) of the CPPA “abridged the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional.<sup>17</sup>

The *Ashcroft* decision did not specifically address the constitutionality of 18 U.S.C. 2256(8)(C) (prohibiting *morphed* child pornography), it did note, in dictum, that “[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children. . .”<sup>18</sup> Courts have taken this dictum to suggest that the *Ashcroft* court would have deemed morphed child pornography as not protected by the First Amendment.<sup>19</sup>

#### ***Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act)***

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the “Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act” (Protect Act) in 2003.<sup>20</sup> The Protect Act, in part, narrowed the definition of “virtual” child pornography in section (8)(B) of the CPPA to include virtual or computer-generated images that are “indistinguishable from” images of actual minors engaging in sexually explicit conduct.<sup>21</sup>

Notably, the definition of “morphed” child pornography contained in section 2256(8)(C) remained unchanged between the CPPA and the Protect Act.

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<sup>13</sup> 18 U.S.C. s. 2256(8) (1996 ed.).

<sup>14</sup> 535 U.S. 234 (2002).

<sup>15</sup> 18 U.S.C. s. 2256(8) (1996 ed.).

<sup>16</sup> *Ashcroft*, 535 U.S. at 256.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 242.

<sup>19</sup> *McFadden v. Alabama*, 67 So. 3d 169, 181-182 (Ala. Crim. App. 2010).

<sup>20</sup> Pub. L. No. 108-21.

<sup>21</sup> 18 U.S.C. s. 2256(8)(B).

### *Case Law since the Passage of the Protect Act*

To date, the federal statutes relating to morphed child pornography have been upheld.<sup>22</sup> In *United States v. Bach*,<sup>23</sup> the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection.<sup>24</sup> The photograph of a well-known child entertainer's head had been "skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of [the child entertainer] sitting in the tree."<sup>25</sup>

The defendant appealed arguing that his conviction was invalid because the definition of morphed child pornography violated the First Amendment. The United States Court of Appeals for the Eighth Circuit disagreed, holding that morphed child pornography "implicate the interests of a real child," and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.<sup>26</sup> The court noted that there may be instances when the "application of s. 2256(8)(C) violates the First Amendment, this is not such a case. This image involves the type of harm which can constitutionally be prosecuted under [*Ashcroft*] and *Ferber*."<sup>27</sup>

In *United States v. Anderson*, the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male.<sup>28</sup> The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad.<sup>29</sup> The court noted that the image at issue was different from the one in *Bach* in that "no minor was sexually abused."<sup>30</sup> However, the court held that because such images falsely portray identifiable children engaging in sexual activity, such images implicate the government's compelling interest in protecting minors. Using this reasoning, the court held that the definition of morphed child pornography was constitutional.<sup>31</sup>

In 2024, Florida passed laws related to generated child pornography. It is unlawful for a person to knowingly possess, control or intentionally view any media which, in whole or in part, is known to include generated child pornography. The possession, control, or intentional viewing of each such media is a separate offense.<sup>32</sup> A person who violates this offense commits a third degree felony.

Generated child pornography, means any image that has been created, altered, adapted, or modified by electronic, mechanical, or other computer-generated means to portray a fictitious

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<sup>22</sup> See *United States v. Ramos*, 685 F. 3d 120, 134 (2d Cir. 2012), cert. denied, 133 S.Ct. 567 (2012); see also *Doe v. Boland*, 630 F. 3d 491, 497 (6th Cir. 2011).

<sup>23</sup> *United States v. Bach*, 400 F. 3d 622 (8th Cir. 2005).

<sup>24</sup> *Id.* at 625.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 632.

<sup>27</sup> *Id.* See also *United States v. Hotaling*, 634 F. 3d 725 (2d Cir. 2008), cert. denied, 132 S.Ct. 843 (2011) (citing *Bach*, the Court held that "child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment").

<sup>28</sup> 759 F. 3d 891 (8th Cir. 2014).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 895.

<sup>31</sup> *Id.* at 896.

<sup>32</sup> Section 827.072(2)(a), F.S.

person, who a reasonable person would regard as being a real person younger than 18 years of age, engaged in sexual conduct.<sup>33</sup>

Section 847.0135, F.S., specifies the criminal offense of computer pornography. It is a third degree felony for a person who:

- Knowingly compiles, enters into, or transmits<sup>34</sup> by use of computer;
- Makes, prints, publishes, or reproduces by other computerized means;
- Knowingly causes or allows to be entered into or transmitted by use of computer; or
- Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.<sup>35</sup>

Section 775.0847, F.S., reclassifies violations of sexual performance by a child; computer pornography; prohibited computer usage; traveling to meet a minor; transmission of pornography by electronic device or equipment; and transmission of material harmful to minors to a minor by electronic device or equipment, to the next higher degree if:

- The offender possesses ten or more images of any form of child pornography<sup>36</sup> regardless of content; and
- The content of at least one image contains one or more of the following:
  - A child who is younger than the age of five.
  - Sadomasochistic abuse<sup>37</sup> involving a child.
  - Sexual battery involving a child.
  - Sexual bestiality involving a child.
  - Any movie involving a child, regardless of length and whether the movie contains sound.<sup>38</sup>

In the case of a third degree felony, the offense is reclassified to a second degree felony.<sup>39</sup>

In the case of a second degree felony, the offense is reclassified to a first degree felony.<sup>40,41</sup>

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<sup>33</sup> Section 827.072(1)(a), F.S.

<sup>34</sup> Section 847.0137, F.S., defines the term "transmit" to mean the act of sending and causing to be delivered, including the act of providing access for receiving and causing to be delivered, any image, information, or data over or through any medium, including the internet or an interconnected network, by use of any electronic equipment or other device.

<sup>35</sup> Section 847.0135(2)(a)-(c), F.S.

<sup>36</sup> Section 775.0847(1)(b), F.S., defines "child pornography" to mean any image depicting a minor engaged in sexual conduct.

<sup>37</sup> Section 775.0847(1)(e), F.S., defines "sadomasochistic abuse," to mean flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

<sup>38</sup> Section 775.0847(2), F.S.

<sup>39</sup> Section 775.0847(3)(a), F.S.

<sup>40</sup> Section 775.0847(3)(b), F.S.

<sup>41</sup> A first degree felony is generally punishable by up to 30 years in prison and a fine not exceeding \$10,000, as provided in ss. 775.082, 775.083, and 775.084, F.S.

### ***Mandatory Minimum Sentencing for Sex Offenses***

Certain sexual offenses will carry mandatory minimum sentences if committed by a person who was previously convicted of or had an adjudication withheld for a specified offense.<sup>42</sup> A person who was previously convicted of or had adjudication withheld for sexual offenses must be sentenced to a mandatory minimum term of imprisonment as follows:

Lewd or lascivious molestation <sup>43</sup>	10 years
Lewd or lascivious molestation of an elderly person or disabled person <sup>44</sup>	10 years
Use of a child in a sexual performance <sup>45</sup>	20 years
Promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child <sup>46</sup>	20 years
Possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography <sup>47</sup>	15 years
Knowingly solicit, possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include child pornography <sup>48</sup>	10 years
Computer pornography <sup>49</sup>	10 years
Transmission of pornography by electronic device or equipment <sup>50</sup>	10 years
Selling or buying of minors <sup>51</sup>	20 years

### ***Obscenity and The Miller Test***

The U.S. Supreme Court has long held that obscenity is not within the area of constitutionally protected speech, however, sex and obscenity are not synonymous. The Court held that portrayal of sex, for example, in art, literature and scientific works, is not itself a sufficient reason to deny material the constitutional protections of free speech. Obscene material is material that deals with

<sup>42</sup> Section 794.0116, F.S.

<sup>43</sup> Section 800.04(5), F.S.

<sup>44</sup> Section 825.0125(3), F.S.

<sup>45</sup> Section 827.071(2), F.S.

<sup>46</sup> Section 827.071(3), F.S.

<sup>47</sup> Section 827.071(4), F.S.

<sup>48</sup> Section 827.071(5)(a), F.S.

<sup>49</sup> Section 847.0135, F.S.

<sup>50</sup> Section 847.0137, F.S.

<sup>51</sup> Section 847.0145, F.S.

sex in a manner appealing to prurient interests.<sup>52</sup> The U.S. Supreme Court's standard for determining what material is obscene has evolved over the years.<sup>53</sup>

In 1973, the U.S. Supreme Court developed a three-prong test in *Miller v. California*,<sup>54</sup> to define obscene speech. The court acknowledged the inherent dangers of undertaking to regulate any form of expression, and that statutes designed to regulate obscene materials must be carefully limited. This is the test that is still used today to determine whether speech is obscene. According to the *Miller* test, speech is determined to be obscene if:

- The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>55</sup>

In addressing the contemporary community standard, the court in *Miller* stated “to require a state to structure obscenity proceedings around evidence of a national ‘community standard’ would be an exercise in futility,” and held that the requirement of the jury to evaluate the materials with reference to contemporary standards of the State is constitutionally adequate.<sup>56</sup>

### ***Material Harmful to Minors***

The power of the state to control the conduct of children reaches beyond the scope of its authority over adults. The state may give minors a more restricted right than that assured to adults to determine for themselves what sex material they may read or see.<sup>57</sup> The U.S. Supreme Court held in *Ginsberg*, that a statute which defined obscenity of material on a basis of its appeal to minors, by prohibiting the sale of obscene material harmful to minors, to youths had a rational relation to the objective of safeguarding such minors from harm, and was constitutionally valid.<sup>58</sup>

Further, courts have found that the state has a “‘compelling interest in protecting the physical and psychological well-being of minors’ which ‘extends to shielding minors from the influence of literature that is not obscene by adult standards.’ In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material. No similar tailoring is required when the material is obscene material, which is not protected by the First Amendment.”<sup>59</sup>

Despite the Court's clear ruling that a state may regulate material harmful to minors, but not obscene for adults, some statutes have been found unconstitutionally overbroad and criminalized constitutionally protected speech. For example, in *Powell's Books Inc. v. Kroger*, the Ninth Circuit Court of Appeals struck down a pair of statutes aimed at prohibiting “luring” and

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<sup>52</sup> *Roth v. U.S.*, S. Ct. 1304 (1957).

<sup>53</sup> See *Roth v. U.S.*, S. Ct. 1304 (1957); *A book named 'John Cleland's Memoirs of a Woman of Pleasure,' et al.*, v. Attorney General of the Commonwealth of Massachusetts, 86 S. Ct. 975 (1965); *Miller v. California*, 413 U.S. 15 (1973).

<sup>54</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>55</sup> *Id.* at 24.

<sup>56</sup> *Id.* at 33-34.

<sup>57</sup> *Ginsberg v. New York*, 88 S. Ct. 1274 (1968).

<sup>58</sup> *Id.* at 1282

<sup>59</sup> *Simmons v. State*, 944 So. 2d 317 (Fla. 2006). See also *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244-45 (2002).

“grooming.”<sup>60</sup> The first statute struck down in this case criminalized providing children under the age of 13 with sexually explicit material, and the second statute criminalized providing minors under the age of 18 with visual, verbal, or narrative descriptions of sexual conduct for the purpose of sexually arousing the minor or the furnisher, or inducing the minor to engage in sexual conduct.<sup>61</sup>

In *Powell’s Books, Inc*, the court found that speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed simply to protect youth from ideas or images legislators find unsuitable. “To criminalize furnishing material solely intended to titillate the reader will certainly sweep up some material that appeals to the prurient interests of children and minors, but it will also criminalize a broad swath of material that does not appeal to prurient interests.”<sup>62</sup> The court found that the statutes were overbroad and reached far more material than hardcore pornography or material that is obscene to minors.

Similarly, in 2011, in *Entertainment Merchants*, the U.S. Supreme Court found that even where the protection of children is the object the constitutional limits on governmental action apply. While *Entertainment Merchants* did not address obscenity directly, it held a statute that regulated violent video games for minors was unconstitutional, and in doing so, noted that minors are guaranteed protections of the First Amendment.

Minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them. No doubt a state possesses legitimate power to protect children from harm, but that does not include a free floating power to restrict the ideas to which children may be exposed. Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.<sup>63</sup>

### ***Florida Transmission of Material Harmful to Minors***

Because the state may modify the test for obscenity as it relates to what is obscene (or “harmful to minors”), courts have upheld the *Miller* test, as modified for minors. The *Miller* test is incorporated into Florida’s definition of what is “harmful to minors” in s. 847.001(7), F.S., and “obscenity” in s. 847.001(12), F.S.

Section 847.001(7), F.S., defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement<sup>64</sup> when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;

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<sup>60</sup> See *Powell’s Books, Inc. v. Kroger*, 622 F. 3d 1202 (2010).

<sup>61</sup> *Powell’s Books, Inc. v. Kroger*, 622 F. 3d 1202, 1206-07 (2010).

<sup>62</sup> *Id.* at 1214-15.

<sup>63</sup> *Brown, Governor of California, et al., Entertainment Merchants Ass’n et al.*, 131 S. Ct. 2729, 2735-36 (2011) (citing *Ernoznik v. Jacksonville*, 422 U.S. 205 (1975); *Ginsberg v. New York*, 88 S. Ct. 1274 (1968); *Prince v. Massachusetts*, 321 U.S. 158 (1944)).

<sup>64</sup> Section 847.001(20), F.S., defines “sexual excitement” as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct *for minors*; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value *for minors*.

Section 847.0138, F.S., provides that:

- Any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor commits a third degree felony.<sup>65</sup>
- Any person in any jurisdiction other than this state who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors, to a specific individual known by the defendant to be a minor commits a third degree felony.<sup>66,67</sup>

The Supreme Court of Florida has upheld Florida's criminal laws relating to the transmission of harmful materials. In *Simmons*, the court noted that sexual expression which is indecent but not obscene is protected by the First Amendment, however the state may regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest.

The court in *Simmons* found that the term harmful to minors is adequately defined by a reference to the three prong miller standard, as modified to apply to minors. The court also noted that the third prong in Miller is particularly important because it allows appellate courts to impose some limitations and regularity on the definition.<sup>68</sup>

### ***Sexual Activities Involving Animals***

“Sexual contact with an animal” means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain which involves:<sup>69</sup>

- Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;
- The fondling of the sex organ or anus of an animal; or
- The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.

A person commits a third degree felony if he or she knowingly:<sup>70,71</sup>

- Engages in any sexual contact with an animal;
- Causes, aids, or abets another person to engage in any sexual contact with an animal;
- Permits any sexual contact with an animal to be conducted on any premises under his or her charge or control;

<sup>65</sup> Section 847.0138(2), F.S.

<sup>66</sup> Section 847.0138(3), F.S.

<sup>67</sup> A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>68</sup> *Simmons v. Florida*, 944 So. 2d 317 (2006).

<sup>69</sup> Section 828.126(1)(a)-(c), F.S.

<sup>70</sup> Section 828.126(2)(a)-(e), F.S.

<sup>71</sup> Section 828.126(3), F.S.

- Organizes, promotes, conducts, aids, abets, participates in as an observer, or advertises, offers, or accepts an offer of an animal for the purpose of sexual contact with such animal, or performs any service in the furtherance of an act involving any sexual contact with an animal; or
- Films, distributes, or possesses any pornographic image or video of a person and an animal engaged in any of the prohibited activities.

### Offense Severity Ranking Chart

Felony offenses which are subject to the Criminal Punishment Code<sup>72</sup> are listed in a single OSRC, which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.<sup>73,74</sup>

A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense. The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.<sup>75</sup>

### III. Effect of Proposed Changes:

The bill amends s. 775.0847, F.S., to revise the circumstances that trigger reclassification for the following offenses:

- Sex performance by a child.<sup>76</sup>
- Computer pornography.<sup>77</sup>
- Transmission of pornography by electronic device or equipment.<sup>78</sup>
- Transmission of materials harmful to minors by electronic device or equipment.<sup>79</sup>

A violation of the above offenses must be reclassified to the next higher degree if the offender:

- Possesses ten or more images of any form of child pornography, regardless of content; and
- The content of at least one image contains one or more of the following:
  - A child who is younger than the age of 12.
  - Sadomasochistic abuse involving a child.
  - Sexual battery involving a child.
  - Sexual bestiality involving a child.
  - Any motion picture, film, video, or computer-generated motion picture, film, or video involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video contains sound.

<sup>72</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

<sup>73</sup> Section 921.0022, F.S.

<sup>74</sup> Section 921.0022(2), F.S.

<sup>75</sup> Section 921.0024(2), F.S., provides that if a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control.

<sup>76</sup> Section 827.071, F.S.

<sup>77</sup> Section 847.0135, F.S.

<sup>78</sup> Section 847.0137, F.S.

<sup>79</sup> Section 847.0138, F.S.

The bill amends s. 794.0116, F.S., to increase mandatory minimum prison sentences for sexual offenses committed by persons previously convicted of, or had an adjudication withheld for, a sexual offense. The bill increases the mandatory minimum term of imprisonment as follows:

- Lewd or lascivious molestation is increased from 10 years to 15 years.<sup>80</sup>
- Sexual performance by a child (producing, directing or promoting) is increased from 20 years to 30 years.<sup>81</sup>
- Selling or buying minors is increased from 20 years to 30 years.<sup>82</sup>

The bill amends s. 827.071, F.S., to:

- Increase the penalty for using a child in a sexual performance from a second degree felony to a first degree felony and provides a mandatory minimum term of imprisonment of 15 years for a person who was 18 years of age or older at the time of the offense.
- Provide a mandatory minimum sentence of five years for the crime of promoting a sexual performance by a child.
- Create the offense of aggravated use of a child in a sexual performance. Aggravated use of a child in a sexual performance or inducing a child younger than 12 years of age to engage in a sexual performance, is a life felony<sup>83</sup> with a mandatory minimum term of imprisonment of 25 years for a person who was 18 years of age or older at the time of the offense.
- Increase the penalty for knowingly soliciting, possessing, controlling, or intentionally viewing child pornography from a third degree felony to a second degree felony.
- Provide that a court is not required to impose a mandatory minimum term of imprisonment for a violation of this section if the court makes the following written findings related to the sexual performance that forms the basis of the violation:
  - The child depicted in the sexual performance was 14 years of age or older at the time the sexual performance was created;
  - The sexual performance was created with the depicted child's permission;
  - The offender was not more than four years older than the depicted child at the time the sexual performance was created; and
  - The offender did not promote the sexual performance to any third party.

The bill amends s. 827.072, F.S., to provide that:

- Any person in this state who knew or reasonably should have known that he or she was transmitting generated child pornography to another person in this state or in another jurisdiction commits a second degree felony.
- Any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting generated child pornography to any person in this state commits a second degree felony.
- A person is subject to prosecution in this state for any act or conduct proscribed in this section, including a person in a jurisdiction other than this state if he or she transmits generated pornography.

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<sup>80</sup> Section 800.04(5), F.S.

<sup>81</sup> Section 827.071(2), F.S.

<sup>82</sup> Section 847.0145, F.S.

<sup>83</sup> A life felony is punishable by a term of imprisonment for life and a fine up to \$15,000, as provided by ss. 775.082, 775.083, and 775.084, F.S.

The bill enhances the penalty for a person who intentionally creates generated child pornography from a third degree felony to a second degree felony.

The bill amends s. 828.126, F.S., to increase penalties for the following offenses relating to sexual activities involving animals from a third degree felony to a second degree felony for a person who knowingly:

- Engages in sexual conduct with an animal.
- Causes, aids or abets another person to engage in any sexual contact with an animal.

The bill further provides that it is a third degree felony for a person to:

- Knowingly permit any sexual contact with an animal to be conducted on any premises under his or her control.
- Knowingly organize, promote, conduct, aid, abet, participate in as an observer, or advertise, offer, solicit, or accept an offer of an animal for the purpose of sexual contact with such animal, or perform any service in the furtherance of an act involving any sexual contact with an animal.
- Knowingly film, distribute, or possess any pornographic image or video of a person and an animal engaged in any of the activities prohibited by this section.

In addition to the penalties prescribed by law, the court must issue an order prohibiting a person convicted under this section from harboring, owning, possessing, or exercising control over any animal. The order must be effective for a minimum of five years after the date of the conviction. Current law provides that such an order may be effective for up to five years.

The bill amends s. 847.011, F.S., to provide that prosecution for offenses relating to the prohibition of certain acts in connection with obscene, lewd, etc., material, does not preclude prosecution for a violation of another crime.

The bill amends s. 847.0137, F.S., to define the following terms:

- “Access credential” means any password, username, token, unique link, URL, hyperlink, or other data that enables a user to access a digital file or data in cloud storage.
- “Child pornography” has the same meaning as in s. 847.001, F.S.<sup>84</sup>
- “Cloud storage” means any remote, networked, or third-party provided storage service that enables a user to store, host, or share digital files or data and to access such files or data through the Internet or other network, whether by direct file transfer, link, access credential, or similar means.
- “Link” means any URL, hyperlink, short link, shareable link, magnet link, or other string, token, or data that, when used, directs or grants access a digital file or other data stored remotely, including cloud storage.
- “Transmit” means the act of sending and causing to be delivered, including the act of providing access for receiving and causing to be delivered, any image, information, or data over and through any medium, including the Internet or an interconnected network, by use of

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<sup>84</sup> “Child pornography” means any image depicting a minor engaged in sexual conduct; or any image that has been created. Altered, adopted, or modified by electronic, mechanical, or other means, to portray and identifiable minor engaged in sexual conduct.

any electronic equipment or other device. The term also includes the act of providing access to any image, information, or data in cloud storage by sharing, publishing, or otherwise making available a link, access credential, or other similar means by which another person may access, view, or obtain such image, information, or data.

The bill increases the offense for any person who knows or reasonably should know that he or she was transmitting child pornography from a third degree as a second degree felony. Additionally, a person 18 years of age or older at the time of the offense and who is convicted of this crime must be sentenced to a mandatory minimum term of imprisonment of 5 years.

The bill provides an exception for a person reporting suspected child pornography. A person who in good faith, provides a link, access, credentials or other information to a law enforcement agency, prosecuting authority, or authorized forensic examiner for the purpose of reporting suspected child pornography, cooperating with an investigation, preserving evidence, or seeking lawful removal of content may not be subject to prosecution under this section for that disclosure.

The bill provides that a court is not required to impose a mandatory minimum term of imprisonment for a violation of this section if the court makes the following written findings related to the image that forms the basis of the violation:

- The child depicted in the image was 14 years of age or older at the time the image was created;
- The image was created with the depicted child's permission;
- The offender was not more than four years older than the depicted child at the time the image was created; and
- The offender did not transmit the image to any third party.

The bill amends s. 921.0022, F.S., to do the following:

- Revise possess, control, or intentionally view any pornographic material which includes child pornography from a third degree felony to a second degree felony.
- Add permitting sexual activities involving animals<sup>85</sup> as a second degree felony, ranked as a Level 6.
- Add engaging in sexual activities involving animals as a second degree felony, ranked as a Level 7.
- Add offenses where a person may not knowingly cause, permit or organize sexual conduct with an animal,<sup>86</sup> as a third degree felony, ranked as a Level 6.
- Add promoting a sexual performance by a child,<sup>87</sup> as a second degree felony, ranked as a Level 7.
- Revised transmitting child pornography from a third degree felony, ranked as a level 5 to a second degree felony, ranked as a Level 6.

The bill takes effect on July 1, 2026.

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<sup>85</sup> Section 828.126(2), (3), F.S.

<sup>86</sup> Section 828.126(4), (5), (6), F.S.

<sup>87</sup> Section 827.071(3), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

The First Amendment of the U.S. Constitution states that, “Congress shall make no law ... abridging the freedom of speech...” This language prohibits the government from having the ability to constrain the speech of citizens. However, materials that constitute child pornography, obscenity, or material harmful to minors may be restricted. Child pornography, obscenity, and material harmful to minors have been defined in ch. 847, F.S., and are consistent with federal law and the United States Supreme Court holdings regarding such laws.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Legislature’s Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the increased penalties and addition of minimum mandatory sentences in the bill may have an overall positive

significant impact on Department of Corrections (DOC) prison bed needs (an increase of 25 or more beds).<sup>88</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.0847, 794.0116, 827.071, 827.072, 828.126, 847.011, 847.0137, and 921.0022.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal and Civil Justice Appropriations Committee on February 25, 2026:**

The committee substitute revises:

- Section 1 of the bill to revert to current law for the reclassification of the crime of possessing or promoting child pornography, except that the amendment provides for reclassification of a child pornography offense if the offender possesses at least one file containing a child younger than the age of 12.
- Section 2 of the bill to increase mandatory minimum sentences for certain sex offenses.
- Section 3 of the bill to remove the changes to the definition of “child,” and provide that certain mandatory minimum sentences only apply to persons 18 years of age or older, unless specified circumstances are met.
- Section 4 of the bill to provide a definition for the term “transmit,” and provides increase penalties for transmitting generated child pornography.
- Section 5 of the bill providing criminal penalties and enhancements for certain sexual activities involving animals.
- Section 6 of the bill providing that prosecution for certain acts in connection with obscene or lewd materials does not preclude prosecution for other specified offenses.
- Section 7 of the bill requiring a mandatory minimum sentence for the transmission of child pornography when committed by specified offenders. Provides specific conditions in which a court is not required to impose a mandatory minimum term of imprisonment.
- Section 8 of the bill amending the offense severity ranking chart of the Criminal Punishment Code to ensure consistency with changes made by the act.

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<sup>88</sup> Office of Economic and Demographic Research, *SB 1750 Criminal Sexual Conduct* (on file with the Senate Appropriations Committee on Criminal and Civil Justice)

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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